CONFERENCE OF THE COMMITTEE ON DISARMAMENT

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LETTER DATED 20 FEBRUARY 1976 FROM THE PERMANENT REPRESENTATIVE OF AUSTRALIA TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL TRANSMITTING THE TEXT OF A STATEMENT ON ENVIRONMENTAL MODIFICATION MADE BY THE AUSTRALIAN REPRESENTATIVE IN THE FIRST COMMITTEE OF THE UNITED NATIONS GENERAL ASSEMBLY ON 24 NOVEMBER 1975

I enclose with this letter the text of a statement on Environmental Modification made by the Australian Representative in the First Committee of the United Nations General Assembly on 24 November 1975.

I should be grateful if you could arrange for this statement to be circulated as an official document of the Conference of the Committee on Disarmament and to be given the appropriate distribution.

(Signed) O.L. Davis
Permanent Representative

GE.76-82032

In the Australian general debate statement in this Committee on 7 November, our delegation indicated that we might wish to express more detailed views concerning the draft convention on the prohibition of military or any other hostile use of environmental modification techniques. It is to this subject that I should like to address myself this morning. We have noted that the two co-authors of the draft convention, the United States and the USSR, both indicated that they would welcome the views of others on this subject during the present session of the General Assembly.

Already a number of delegations have commented, including an interesting intervention by the Swedish delegation on 14 November. Australia has no special role in the field of environmental modification for military purposes. However, my Government has taken an interest in this question in the context of the negotiation of the draft articles concerning protection of the environment that have been included in the protocols currently being negotiated at the Diplomatic Conference on Humanitarian Law in Armed Conflict, in Geneva.

Consequently, we would like to offer a few questions and a few suggestions which we hope that members of the CCD might take into account in their discussion of the draft convention next year.

My Government believes that the discussion in the CCD should take into account the draft articles that have been included in the two protocols which have been negotiated at Geneva. I shall list these very briefly. In protocol I, which deals with conflicts between states, there are two relevant articles.

Article 33.3 states as the basic rule:

"It is forbidden to employ methods or means of warfare which are intended or might be expected to cause widespread, long-term and severe damage to the natural environment."

Article 48 bis states:

"Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. Such care includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisal are prohibited."

This draft article reflects the view that the protection of the environment in time of war has as its purpose the continued survival or health of the civilian population which lives in that environment. This, of course, was the basic rationale behind the inclusion of provisions concerning protection of the environment in a draft instrument on humanitarian law in armed conflict.

In the second protocol, which concerns purely internal conflicts, draft article 28 states the basic rule in similar terms to those of article 33.3 which I just quoted.

The Australian Government recognizes that the draft convention is an arms control measure, whereas the articles in the Geneva protocols are part of the humanitarian law of armed conflict. The points of origin of these two proposed legal instruments are, therefore, not the same and we would expect to see some differences between them. We believe, however, that there is a need to give consideration to the desirability of harmonizing the two approaches as much as may be appropriate, and we would be concerned if discussion of the convention in the CCD did not take into account the corresponding discussion on the articles on environmental protection taking place in the ICRC.

Consideration should be given to providing consistency of language wherever possible. On the other hand, and because the convention and the protocol articles are not intended to cover the same ground, it needs to be re-emphasized that the conclusion of a convention along the lines of the draft convention should not be proposed, presented or perceived as an alternative to the Geneva articles.

I would now like to comment briefly on some of the individual articles in greater detail. We have several queries concerning article 1. The undertaking in article 1 is limited to "destruction, damage or injury to another State party." This language is presumably appropriate for a convention between States. Nevertheless, we wonder whether the article might not indicate more precisely the nature of the damage that is to be prohibited. Does the convention article encompass damage or injury to a State's citizens or to their property, or to their environment? This is not very clear. Again, the reference to "widespread, long-lasting or severe effects" does not make clear whether it refers to severe effects on the natural environment or on the human environment or on both.

A third point of interest we have noted in article 1 is that, in its present form, it applies only to environmental modification techniques "having" widespread effects; whereas the draft Geneva articles would seem to have a broader coverage in that they prohibit techniques "which are intended or which may be expected to cause" such prohibited effects.

On the face of it, therefore, it would seem to the Australian Government that there should be some consideration of whether article 1 is sufficient clear and precise as it now stands.

Article 2 of the draft convention refers to techniques "for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth." The protocol articles, on the other hand, apply generally to damage to the

natural environment and would, therefore, seem to be broader in their scope. They would not only prohibit damage to the environment which was the result of deliberate manipulation of natural processes, they would also prohibit such damage as resulted from severe alteration to the terrain by major military operations. I would note, however, that it was generally agreed and recorded in Geneva that what is described as battlefield damage could not be prohibited.

Secondly, on this article, we have noted with some interest the comment by the Swedish delegation in regard to the list of examples which is given in the text of article 2. We agree that there may be a case for not listing examples which might have the disadvantage of focusing attention on particular methods of environmental modification for military purposes and thereby of diverting attention from possibly quite serious developments in other fields.

At first sight, for example, it is a little difficult to see that article 2 could also cover the large-scale use of herbicides or other chemicals as a means of upsetting the ecological balance of a region. The article as it now stands seems to put the major emphasis on examples of applications of physical and meteorological energies which are present in the environment.

With regard to article 3, we have considered the Swedish suggestion that this article perhaps may not be necessary at all. Our own approach is somewhat different, though it stems from a similar concern. In Australia's view, the peaceful use of environmental modification techniques is already subject to existing rules of international law dealing with the protection of the environment of States, for example, principle 21 of the Stockholm Declaration and also the recent judgment of the International Court of Justice in the nuclear-testing case. In Australia's view, existing international law prohibits the modification of a State's environment without its consent by activities under the jurisdiction or control of another State. Therefore, we believe it should be made clear in the convention that the convention is not the only international law on environmental modification. One way of doing that might be to add a phrase at the end of article 3 along the following lines: "subject to the provisions of existing international law prohibiting the modification of a State's environment without its consent by activities under the jurisdiction or control of another State."

The precise operation of article 4 does not seem very clear. Article 4 states that the prohibition applies to any activity, anywhere, under a State's jurisdiction or control. The State's own territory would obviously be covered by this. Presumably adjacent sea areas or the air-space above them could also be considered to be under the jurisdiction of the State in respect of activities by itself or by its nationals.

Activities carried out in the air-space or territory of a third State could also probably be considered to be under the jurisdiction or control of the State which carried out a prohibited activity. It seems desirable to con ider the redrafting of this article to make it clear that it would apply to activities in one's own territory, in the territory of a third State, and in areas beyond national jurisdiction. Since the convention is only concerned with activities directed against another State, it would seem that the real operation of article 4 is significantly limited.

In regard to article 5, we share the Swedish concern about the need to ensure that the envisaged complaints procedure in the Security Council should not be weakened in any way by the veto right of permanent members of the Council. It is essential that all States parties to the convention should accept the same obligations to co-operate in any investigation of a complaint on a basis of equality.

We would also comment in relation to this article that the Security Council would clearly be lacking in the technical expertise it would need to adjudicate environmental modification complaints. The Council should therefore be empowered to call upon technical advice, as required, from any expert body, either within or outside the United Nations system, when investigating the basis of a complaint.

While it would not be possible or desirable for United Nations technical bodies such as the World Meteorological Organization (WMO), the Food and Agriculture Organization (FAO) or the United Nations Environment Programme (UNEP) to adjudicate disputes, it might be desirable to indicate in the convention that such United Nations bodies would have a potential advisory role.

In regard to article 8, Australia believes that, in view of the intended universal nature of the draft convention, it would seem most appropriate for the United Nations Secretary-General to be given the depositary functions.

In conclusion, I should like to offer the congratulations of my Government to both the United States and the Soviet Union for their rapid negotiation of this draft convention. I share the hope that the CCD will be able to conclude its consideration of the draft convention in the forthcoming year, so that we may have yet another international disarmament instrument on the books and ready for signature at next year's General Assembly.